The applicants further submit that both contested regulations are vitiated by the infringement of fundamental procedural requirements provided by Regulation 2026/97 ([4]) and Regulation 384/96 respectively as well as by the Anti-dumping agreement and the Agreement on subsidies and countervailing measures, having imposed anti-dumping and countervailing measures on the basis of a Community of 25 Member States even though the investigation was initiated and conducted on the basis of a 15 Member States.

The applicants also contend that Regulation 1628/2004 imposes countervailing duties in inappropriate amounts in respect of the Indian DEPB post-export scheme thus violating Regulation 2026/97, the Agreement on subsidies and countervailing measures and the principle of proportionality, committing a manifest error of assessment and breaching fundamental procedural requirements.

The applicants also invoke violations of Regulations 2026/97 and 384/96 respectively, of the anti-dumping agreement and the Agreement on subsidies and countervailing measures, as well as a manifest error of assessment, contending that the contested measures base material injury determination on data made unreliable by the existence of anti-competitive market sharing and price fixing agreements between the members of the Community industry, confirmed and sanctioned by a decision of the Commission itself.

Finally, the applicants contend that the contested measures respectively violate Article 3 paragraph 2 of Regulation 384/96 and Article 8 paragraph 7 of Regulation 2026/97 in failing to remove the effects of other factors in determining its final injury analysis and thereby attributing injury caused by other factors to Indian imports.

([1]) OJ L 295, 18.9.2004, p. 4.

([2]) OJ L 295, 18.9.2004, p. 10.

([3]) Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, OJ L 56, 6.3.1996, p. 1.

([4]) Council Regulation (EC) No 2026/97 of 6 October 1997 on protection against subsidized imports from countries not members of the European Community, OJ L 288, 21.10.1997, p. 1.

Action brought on 19 November 2004 by Elisabetta Dami against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case T-466/04)

(2005/C 69/35)

(Language in which the application was submitted: French)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) was brought before the Court of First Instance of the European Communities on 19 November 2004 by Elisabetta Dami, residing in Milan (Italy), represented by Paolo Guido Beduschi and Silvia Giudici, lawyers.

The Stilton Cheese Makers Association was also a party to the proceedings before the Second Board of Appeal.

The applicant claims that the Court should:

— establish that the letter of 4 June 2004, sent to the Office and signed jointly does not contain a statement intended to bring an end to the proceedings before the Board of Appeal, but is only an application for a stay of proceedings;

— annul the decision of the Second Board of Appeal of the Office of 20 September 2004 in Case R 973/2002-2 and refer the case back to the Board of Appeal;

— order the Office to pay the costs.

Pleas in law and main arguments

Applicant for Community trade mark:	The applicant
Community trade mark sought:	Word mark 'GERONIMO STILTON' for goods and/or services in Class 16 (books etc.), Class 25 (clothing etc.), Class 28 (games etc.), Class 29 (meat etc.), Class 30 (cake dough etc.) and Class 41 (services rendered in the field of education etc.) – Application No 1345503

Proprietor of mark or sign cited in the opposition proceedings:	The Stilton Cheese Makers Association
Mark or sign cited in opposition:	National word mark 'STILTON'; registered designations of origin WHITE STILTON CHEESE and BLUE STILTON CHEESE
Decision of the Opposition Division:	Opposition allowed for Classes 29 and 30
Decision of the Board of Appeal:	The Board of Appeal held that as a result of amendments to the specification of the relevant goods, in accordance with a joint letter from the parties of 4 June 2004, the opposition had been withdrawn and the proceedings had therefore been terminated. Since according to the Board of Appeal, the only question to be decided was the allocation of costs, each party was ordered to bear the fees and expenses of the opposition and appeal proceedings which it had itself incurred.
Pleas in law:	In support of its application, the applicant submits that the letter of 4 June 2004 contained only an application for a stay of the proceedings in order to allow the parties to resolve between themselves the issue, which is still in dispute, namely which other goods apart from dairy products and cheese should be removed from Class 29 in order to enable the party in opposition to withdraw its opposition. The Board of Appeal erred in holding that the applicant, having accepted the application for a stay of proceedings, had agreed to what the party in opposition was requesting.

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(Case T-467/04)

(2005/C 69/36)

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The applicant claims that the Court should:

— establish that the letter of 4 June 2004, sent to the Office and signed jointly does not contain a statement intended to bring an end to the proceedings before the Board of Appeal, but is only an application for a stay of proceedings;

— annul the decision of the Second Board of Appeal of the Office of 20 September 2004 in Case R 982/2002-2 and refer the case back to the Board of Appeal;

— order the Office to pay the costs.

Pleas in law and main arguments

Applicant for Community trade mark:	The applicant
Community trade mark sought:	Word mark 'GERONIMO STILTON' for goods and/or services in Class 16 (books etc.), Class 25 (clothing etc.), Class 28 (games etc.), Class 29 (meat etc.), Class 30 (cake dough etc.) and Class 41 (services rendered in the field of education etc.) – Application No 1345503
Proprietor of mark or sign cited in the opposition proceedings:	The Stilton Cheese Makers Association
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Decision of the Opposition Division:	Opposition allowed for Classes 29 and 30